



RECENT DEVELOPMENTS IN REFUGEE PROTECTION IN HUNGARY

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I. Background information

Three factors significant impact on the Hungarian asylum system in the past three years:

1. **The sharp decrease in the number of asylum-seekers** applying for refugee status in Hungary, which results in a decreased "pressure" on the Hungarian asylum-system.
2. **The amendment of the Asylum Act**, which entered into force on 1 May 2004. Following the amendment, the previously four-instance procedure (in which interviewing the applicant was obligatory only at the first instance) was significantly shortened. **The procedure now consists of two instances**, one administrative (conducted by territorial departments of the Office of Immigration and Nationality, OIN) and one judicial (in which the Budapest Municipal Court has exclusive competence). The second-instance procedure became **litigious**, with an obligatory hearing at the Court.
3. **The Hungarian Government's obligation to comply with the EU asylum *acquis***. Preparation for EU membership and accession on 1 May 2004 has had a significant impact on asylum and migration matters as well. In the field of asylum, the transposition of EC directives¹ has brought about some positive legislative changes (e.g. allowing asylum seekers to have access to the labour market according to the general rules applicable to foreigners one year from the submission of an asylum application). However, the Reception Conditions Directive has not been fully transposed yet and many of the current Hungarian provisions do not meet the Directive's minimum standards (e.g. lack of provision of information to asylum seekers, lack of mental health care for detained asylum seekers, lack of an independent appeal body to consider decisions rejecting granting of benefits).

<i>Year</i>	<i>No. of asylum-seekers</i>
2002	6 412
2003	2 401
2004	1 600
Jan-Aug 2005	1 065

II. Positive developments

The HHC has witnessed some major improvements in the Hungarian asylum system in recent years.

- **The "recognition rate"²** – which in previous years used to be extremely low in comparison with most European countries – **has significantly increased** and seems to stabilise at a more acceptable level. The increase refers to a less restrictive current interpretation of the refugee definition by Hungarian authorities.
- Following the modification of legal provisions relating to the asylum procedure (see I.3.), **the judicial review of administrative decisions on refugee status has**

<i>Year</i>	<i>Recognition rate (1st inst.)</i>
2002	3.88%
2003	10.33%
2004	13.80%
2005. I-VIII.	12.06%

¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

² Recognised persons / Persons in the case of whom an in-merit decision was passed (i.e. rejected + recognised asylum-seekers)

become significantly more effective. Prior to the amendment of the Asylum Law, asylum-seekers were practically never interviewed by the Budapest Municipal Court (i.e. judges decided exclusively on the basis of the case documentation) and court decisions cancelling the administrative decision(s) were highly exceptional. Since 1 May 2004, the Court has cancelled several first-instance decisions (when considering that the authority had not established all relevant facts) and has even recognised some asylum-seekers as refugees.

- Both the quantity and the quality of **country of origin information** used in asylum decisions have **significantly improved**, partly because of the special emphasis placed on this issue by the Budapest Municipal Court.
- According to the HHC's experience, the OIN has recently started a practice of issuing **residence permits to "persons authorised to stay (PAS)"³ for a two-year period**, while previously one year was their maximum validity (or even a shorter period). This change of policy may have a significant positive effect on the integration opportunities of persons granted subsidiary protection in the future (particularly in accessing the labour market more effectively).
- Mostly based on the above factors, the HHC is of the opinion that **the quality of asylum decisions and the proficiency of refugee status determination have considerably improved** since 2002.

III. Main problems and shortcomings

Notwithstanding the above-mentioned very important improvements, some seriously worrisome factors continue to darken the overall picture about the functioning of the Hungarian asylum system and the respect for human rights therein:

- **In Hungary, asylum seekers may still be detained for a maximum period of 12 months**, provided that certain conditions are fulfilled. The detention of irregular foreigners (including those who have applied for refugee status) aims to ensure that their expulsion can be enforced. However, **in many cases, "irregular foreigners" remain in detention even after it has become obvious that their expulsion cannot be carried out before the end of the 12-month period** (e.g. for practical reasons such as the lack of travel documents; or for legal reasons: expulsion can not be enforced prior to the negative decision in the asylum procedure becomes final and enforceable, which may easily take longer than a year). Migrants detained in alien policing jails, which are maintained by the Border Guard, have very limited possibilities for recreational or work activities. The legal regime applicable in alien policing jails lacks a clear and uniform regulatory framework: a ministerial decree⁴ provides a broad framework, but detailed rules on the detainees' rights, obligations and treatment are governed by house rules issued by each jail commander, which allows for arbitrariness as well as unlawful and unreasonable restrictions.
- **The Border Guard continued its practice to apprehend asylum-seekers at the entrance of the Debrecen refugee reception centre and put them in detention in lack of valid travel documents.** These asylum-seekers, in case they manage to enter the refugee camp and apply for asylum, would be accommodated at the open camp, since their *bona fide* application for refugee status "exempts" them of alien policing detention. The fact that they voluntarily approach the reception centre clearly indicates their intention to seek asylum. However, the Border Guard hinders them from doing so and once they are apprehended outside the camp without a valid travel document and entitlement to stay in Hungary, they will be transferred to a detention facility where they face a lengthy detention, even if later they apply for asylum. These foreigners clearly express their wish to ask for asylum by approaching the reception centre, their detention – while being lawful under Hungarian legal provisions in force – is therefore completely unnecessary and **is in violation of Article 31 of the 1951 Geneva Convention**.
- **The principle of non-refoulement is only formally observed by alien policing authorities.** The principle of non-refoulement is embodied in Hungarian law by Section 43(1) of the Aliens Act, which provides that "Returning, refusal of entry and expulsion shall not be ordered and shall not be

³ Rejected asylum-seekers who benefit from subsidiary protection under the provisions of the Aliens Act, with reference to danger of torture, inhuman or degrading treatment or punishment (but not persecution on account of race, religion, nationality, membership in a particular social group or political opinion) in the country of origin

⁴ Decree no. 27/2001 (XI. 29.) of the Minister of the Interior and the Minister of Justice on the rules of detention ordered in alien policing procedures

implemented with respect to a country which, with regard to the person concerned, does not qualify as safe country of origin or a safe third country, in particular, where the foreigner would be exposed to persecution owing to reasons of race, religion, national or social affiliation or political views, or to the territory of a state or the border of an area where there is good reason to suppose that the returned, refused or expelled foreigner would be exposed to torture, inhuman or degrading treatment or the death penalty". State authorities must *ex officio* observe this provision and carry out a due assessment accordingly. **However, the alien policing authority passes expulsion orders apparently without a real examination of the above, and relevant decisions fail to contain any reference thereto.** Meanwhile, a number of asylum seekers previously apprehended, detained and expelled by the Alien Policing Department of the OIN were later recognised as refugees by the Asylum Department of the same state authority.

- **The subsidiary protection regime** (i.e. the "person authorised to stay" status based on Section 43(1) of the Aliens Act) **provides limited rights and is based on a narrower definition than the one foreseen by the EU Qualification Directive. The integration opportunities available for persons under subsidiary protection are still extremely limited** (e.g. with a one-year residence permit it is practically impossible to find an employment). **They are not entitled to any sort of family reunification** (they are not even mentioned by the relevant Section 14(1) of the Aliens Act), **nor to a travel document**, as a result of which many of them get stranded in Hungary without any possibility to e.g. visit family members in other European countries. The subsidiary protection status is generally granted by the Asylum Department of the OIN but **the Alien Policing Department is in charge of renewing it** on a periodic basis. The latter department however **completely lacks training in human rights and protection-related legal issues**, therefore its capacity to fairly and effectively assess the need for subsidiary protection is questionable.
- **Hungary has a highly restrictive approach concerning family reunification.** Even if the recent adoption of the provisions of the EU Family Reunification Directive constitutes a significant improvement in this field, Hungary has only adopted its "compulsory" provisions, even if the Directive affords numerous possibilities to adopt more favourable rules. **The definition of "family member" is restricted** to the spouse and the under-age child (plus direct-line ascendants or legal guardian for separated children), even in case of refugees, therefore economically dependent or otherwise vulnerable relatives (e.g. dependent adult children, elderly parents, handicapped relatives, etc.) or common-law partners cannot *per se* benefit from family reunification (even if all the conditions are fulfilled). **Family members of refugees are not granted refugee status** solely on the basis of their close tie to a person with a well-founded fear of persecution, contrary to explicit recommendations made by UNHCR to grant the same status to family members in such cases⁵. PAS do not have the right to family reunification at all. This policy goes against the right to family life and unity embedded both in various international human rights instruments and the Hungarian Constitution. Moreover, it seriously endangers refugees' and other foreigners' successful integration into Hungarian society.

The Hungarian Helsinki Committee (HHC) has been providing legal assistance to migrants in need of international protection since 1995. In 1998, the HHC became an implementing partner of the UN High Commissioner for Refugees (UNHCR). In addition to legal assistance work for individual asylum seekers and refugees, the HHC is active in legislative monitoring and advocacy for improving protection standards and practices in Hungary. The HHC is a member of the International Helsinki Federation and the European Council on Refugees and Exiles (ECRE).

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⁵ See e.g. UNHCR Executive Committee Conclusion No. 24 (XXXII) – 1981